

**FILED**

**APR 11 2012**

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,  
425 Third Street, S.W., Suite 800  
Washington, DC 20024,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,  
601 South 12<sup>th</sup> Street  
Arlington, VA 22202,

Defendant.

Case: 1:12-cv-00563

Assigned To : Kollar-Kotelly, Colleen

Assign. Date : 4/11/2012

Description: FOIA/Privacy Act

**COMPLAINT**

Plaintiff Judicial Watch, Inc. ("Plaintiff") brings this action against Defendant United States Department of Homeland Security ("Defendant") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

**PARTIES**

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 425 Third Street, SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest mission, Plaintiff

regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and is headquartered at United States Department of Homeland Security, 601 South 12<sup>th</sup> Street, Arlington, VA 22202. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On September 2, 2011, Plaintiff submitted a FOIA request to U.S. Immigration and Customs Enforcement (“ICE”), a component of Defendant, by email and certified mail. Plaintiff’s September 2, 2011 request sought access to the following public records:

- 1) All records of communications, contacts, and correspondence between ICE and the following entities concerning or relating to Onyango Obama, who was arrested in Framingham, Massachusetts on August 25, 2011 (sic):
  - The Framingham Police Department;
  - The White House;
  - The Executive Office of the President;
  - The Department of Justice.
- 2) All records of communications between any officials, officers, or employees of ICE concerning or relating to Onyango Obama.

6. On September 12, 2011, Plaintiff submitted a second FOIA request to ICE, by email and certified mail. Plaintiff’s September 12, 2011 request sought access to the following public records:

- 1) All records of communications, contacts, and correspondence between ICE and the following entities concerning or relating to Onyango Obama, who was arrested in Framingham, Massachusetts on August 24, 2011 and released from federal custody at the Plymouth County House of Correction on September 8, 2011, via an “order of supervision”:

- a. The Framingham Policy Department;
  - b. The Plymouth County Sheriff's Department;
  - c. The White House;
  - d. The Executive Office of the President;
  - e. The Department of Justice.
- 2) All records of communications between any officials, officers, or employees of ICE concerning or relating to Onyango Obama.

7. By letter dated September 20, 2011, ICE acknowledged receipt of Plaintiff's September 2, 2011 and September 12, 2011 requests and indicated that it was consolidating the two requests because they sought similar information. ICE's letter also stated that it considered the consolidated request to have been received by its FOIA office on September 20, 2011.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff's requests within twenty (20) working days, or by October 19th, 2011, and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination.

9. As of the date of this Complaint, Defendant has failed to: (i) determine whether to comply with Plaintiff's requests; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

10. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
**(Violation of FOIA, 5 U.S.C. § 552)**

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Defendant is unlawfully withholding public records requested by Plaintiff pursuant to 5 U.S.C. § 552.

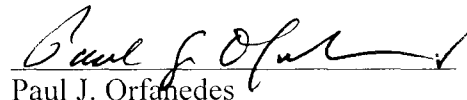
13. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of the requested public records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

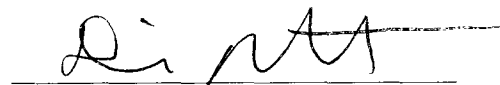
Dated: April 11, 2012

Respectfully submitted,

JUDICIAL WATCH, INC.



Paul J. Orfanedes  
D.C. Bar No. 429716



David F. Rothstein  
D.C. Bar No. 450035  
425 Third Street, S.W., Suite 800  
Washington, DC 20024  
(202) 646-5172

*Attorneys for Plaintiff*